

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

Case No. 90-80492

D-1, PATRICK SIMS,

HON. AVERN COHN

Defendant/Petitioner.

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ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL

I.

This is a criminal case which has long since closed. In 1990, Patrick Sims ("Petitioner") and four codefendants were arrested after attempting to purchase 15 kg of cocaine from undercover narcotics officers. The officers found firearms in all three cars used by the defendants in the transaction, including two machine guns (automatic AR-15 rifles). Petitioner was charged with various weapons and drug offenses, including a violation of 18 U.S.C. § 924(c) for using or carrying a firearm, specifically a machine gun. After an appeal and remand, the Court sentenced Petitioner to 42 years and seven months imprisonment. Petitioner appealed, specifically challenging his § 924(c) conviction. The Sixth Circuit affirmed. See United States v. Sims, 41 F.3d 1508 (6th Cir. 1994).

Before the Court is Petitioner's paper in which he requests the appointment of counsel in order to file a habeas petition. The Court construes the paper as a motion for the appointment of counsel. See Doc. 423. For the reasons that follow, the motion is

DENIED.

II.

Following affirmance of his conviction and sentence, Petitioner filed several post conviction motions. In 1995, Petitioner filed a motion under § 2255 challenging his § 924(c) conviction. The motion was denied in 1999. In 2001, Petitioner filed a motion under § 2241 and simultaneously sought leave to file a second § 2255 motion in the Sixth Circuit. In each filing, Petitioner argued that his § 924(c) conviction on the machine gun charge should be vacated in light of the Supreme Court's decision in Castillo v. United States, 530 U.S. 120 (2000). The Sixth Circuit denied Petitioner's request to file a second § 2255 motion and the Court denied his motion under § 2241. Petitioner did not appeal. In the meantime, Petitioner was transferred to a federal facility in Pennsylvania. In 2004, Petitioner filed another § 2241 motion in the Western District of Pennsylvania, challenging his § 924(c) conviction in light of Castillo. Petitioner also for the first time raised a challenge to his § 924(c) conviction based on the Supreme Court's decision in Bailey v. United States, 516 U.S. 137 (1995). The district court, adopting the report and recommendation of a magistrate judge, denied the motion on the grounds that Petitioner's claims were properly raised in a § 2255 motion. Petitioner appealed. The Third Circuit affirmed. See Sims v. United States, No. 06-2440 (3d Cir. Nov. 28, 2006). In 2008, Petitioner filed a petition for a writ of audita querela, again challenging his § 924(c) conviction. The Court denied the petition. See Order filed October 28, 2008 (Doc. 422).

Petitioner then filed the instant motion.

III.

Putting aside the fact that there is no pending habeas petition before the Court, Petitioner is not entitled to the appointment of counsel to assist him in filing such a petition. Petitioner has no absolute right to be represented by counsel on federal habeas review. See Abdur-Rahman v. Michigan Dept. of Corrections, 65 F.3d 489, 492 (6th Cir. 1995). Moreover, Petitioner has not shown that the appointment of counsel is warranted in order to present his claim. See 18 U.S.C. § 3006A(2)(B); Cobas v. Burgess, 306 F.3d 441, 444 (6th Cir. 2002). Finally, should Petitioner wish to file another habeas petition, he must first seek permission from the Sixth Circuit under 28 U.S.C. § 2255(h), 28 U.S.C. § 2244.

SO ORDERED.

Dated: January 7, 2011

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to Patrick Sims, 13953-039, Federal Medical Center, P.O. Box 879, Ayer, MA 01432 and the attorneys of record on this date, January 7, 2011, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160